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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 MARK A. FREGIA,

12 Plaintiff,

13 v.

14 YUCUI CHEN, et al.,

15 Defendants.
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No. 1:20-cv-01024-DAD-EPG (PC)

SCREENING ORDER

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ON PLAINTIFF'S CLAIMS
AGAINST DEFENDANTS GOSSO,
JOHNSON AND CHEN FOR DELIBERATE
INDIFFERENCE TO SERIOUS MEDICAL
NEEDS IN VIOLATION OF THE EIGHTH
AMENDMENT AND AGAINST
DEFENDANT GOSSO FOR RETALIATION
IN VIOLATION OF THE FIRST
AMENDMENT AND THAT ALL OTHER
CLAIMS BE DISMISSED

(ECF No. 16)

TWENTY-ONE DAY DEADLINE

22 Plaintiff Mark A. Fregia ("Plaintiff") is a state inmate proceeding *pro se* and *in forma*
23 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
24 commencing this action on July 24, 2020. (ECF No. 1). Plaintiff filed a first amended complaint
25 ("FAC") on April 23, 2021. (ECF No. 16). The FAC, which is now before the Court for
26 screening, brings claims against various medical providers for retaliation and deliberate
27 indifference to serious medical needs.

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1 For the reasons described below, the Court recommends that case proceed on Plaintiff's
2 claims against (1) Defendants Lisa Gosso, Dr. Marcy Johnson, and Dr. Yuchui Chen for
3 deliberate indifference to serious medical needs in violation of the Eighth Amendment, and (2)
4 Defendant Gosso for retaliation in violation of the First Amendment. The Court recommends
5 dismissing all other claims.

6 Plaintiff has twenty-one days from the date of service of these findings and
7 recommendations to file any objections.

8 **I. SCREENING REQUIREMENT**

9 The Court is required to screen complaints brought by inmates seeking relief against a
10 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
11 Court must dismiss a complaint or portion thereof if the inmate has raised claims that are legally
12 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
13 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).
14 As Plaintiff is proceeding *in forma pauperis*, the Court may also screen the complaint under 28
15 U.S.C. § 1915. “Notwithstanding any filing fee, or any portion thereof, that may have been paid,
16 the court shall dismiss the case at any time if the court determines that the action or appeal fails to
17 state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

18 A complaint is required to contain “a short and plain statement of the claim showing that
19 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
20 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
21 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
22 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
23 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
24 *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this
25 plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are not
26 required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681
27 (9th Cir. 2009) (citation and quotation marks omitted). Additionally, a plaintiff’s legal
28 conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

1 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal
2 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
3 pro se complaints should continue to be liberally construed after *Iqbal*).

4 **II. ALLEGATIONS IN THE COMPLAINT**

5 The FAC alleges as follows:

6 **A. Claim 1: Deliberate Indifference to Serious Medical Needs and Retaliation**

7 On January 24, 2018, Plaintiff had a telemedical consultation with Defendant Chen at
8 California Substance Abuse Treatment Facility Corcoran. Plaintiff was then taking 225 mg of
9 Effexor¹ to treat a Cluster B personality disorder. Defendant Chen renewed Plaintiff’s
10 prescription at that appointment and prescribed Vistaril for a sleep disorder. Defendant Gosso, a
11 medical assistant, was also at this appointment. Defendant Gosso was then in training.

12 The next day, Plaintiff was called into the clinic lab. Plaintiff was told that the purpose of
13 his appointment was to draw a blood sample. “Due to religious restrictions, Plaintiff told the Lab
14 Tech that he could not consent to allowing his Blood to be drawn. He went on to discuss his
15 religion with her and the reason that extraction of Blood was against the core beliefs of his faith.”
16 During that discussion, Defendant Gosso appeared and “rudely interjected with her uninvited
17 opinions that turned into threats of withholding Plaintiff[’]s medication of he would not consent
18 to Labs.” Defendant Gosso already harbored animosity to Plaintiff because Plaintiff had recently
19 made a complaint against her. Plaintiff believed that Defendant Gosso showed up to meddle in
20 affairs that were none of her concern to get back at him for his complaint.

21 At pill call that evening, Plaintiff was told that his medications, including Effexor, could
22 not be dispensed. Plaintiff asked why and “was told that M.A. Gosso had e-mailed his doctor and
23 had his medications discontinued” and that “Gosso had specifically told the doctor that the
24 Plaintiff had ‘requested to be taken off his meds.’ ” This was a lie.

25 Even if Plaintiff had requested to be taken off his meds, Defendant Gosso knew that
26 protocol required a person be slowly weaned off Effexor to prevent painful withdrawal
27 symptoms. Defendant Gosso intentionally used her position to retaliate against Plaintiff.

28 ¹ Spelled “EFEXOR” in the FAC.

1 Defendant Gosso was familiar with Effexor and knew Plaintiff would begin to experience painful
2 withdrawal symptoms within 24 hours of missing a dose.

3 That night, Plaintiff began suffering from withdrawal symptoms. In the morning, he had
4 severe symptoms, including pain in his joints and muscles, a runny nose, headaches, and nausea.
5 Defendant Gosso knew this would occur.

6 **B. Claim 2: Deliberate Indifference to Serious Medical Needs**

7 Plaintiff's withdrawal symptoms included panic attacks. He made an emergency request
8 to see his mental health case worker, Defendant Johnson. Plaintiff informed Defendant Johnson
9 that he was not receiving his medication due to Defendant Gosso's lie and that he was having
10 withdrawal symptoms. Plaintiff asked Defendant Johnson to contact Defendant Chen to reinstate
11 his prescription. Defendant Johnson informed Plaintiff that Defendant Chen was gone for three
12 days and there was nothing she could do. Plaintiff told Defendant Johnson about his withdrawal
13 symptoms and asked for an emergency referral to any staff psychiatrist on duty who could
14 reinstate the medicine. Defendant Johnson said Plaintiff would have to wait for Defendant Chen.

15 Plaintiff then informed Defendant Johnson that his withdrawal symptoms included
16 suicidal thoughts. "All Dr. Johnson did was tell Plaintiff that he should try and hold on until Dr.
17 Chen returned because she could not contact her while she was away from the facility and that as
18 a PHD, she could not prescribe meds herself."

19 Because Plaintiff informed Defendant Johnson that he was suicidal, failing to contact his
20 psychiatrist (Defendant Chen) or ordering Plaintiff into crisis management was contrary to mental
21 health procedure. Plaintiff believed that Defendant Johnson was acting contrary to mental health
22 procedure because she had been contacted by, and was acting in collusion with, Defendant Gosso.
23 This inaction led to a rapid deterioration in Plaintiff's mental health to the point that he ended up
24 in a crisis bed.

25 **C. Claim 3: Deliberate Indifference to Serious Medical Needs and Supervisory**
26 **Liability**

27 Under both the CDCR's and the manufacturer's protocols, people discontinuing Effexor
28 must be weaned off the medication in 50-75 mg increments. Defendant Chen canceled Plaintiff's

1 prescription after being contacted by Defendant Gosso, who lied.

2 Only a psychiatrist, such as Defendant Chen, has the authority to cancel Plaintiff's
3 prescription. Defendant Gosso had no such authority. Defendant Chen was derelict in her duties
4 by allowing Defendant Gosso to cancel Plaintiff's medications with just a phone call. Defendant
5 Chen knew of the problems with stopping Effexor suddenly and had seen Plaintiff the day before,
6 thus knew Plaintiff was amenable to taking his medications. Defendant Chen did not follow
7 protocol in weaning Plaintiff off Effexor through gradual reductions in his dose. After being
8 contacted by Defendant Gosso, Defendant Chen did not examine Plaintiff or ask Plaintiff's
9 psychologist or case worker to see Plaintiff. Defendant Chen made no effort at all to find out what
10 Plaintiff's mental state was or what had brought on this sudden change in attitude regarding his
11 medication.

12 Defendant Gosso is Defendant Chen's subordinate. It is Defendant Chen's responsibility
13 to prescribe or cancel medications. Plaintiff's prescription could not have been canceled unless
14 Defendant Chen authorized it. To let Defendant Gosso abuse the system and harm Plaintiff makes
15 Defendant Chen complicit. "Plaintiff could not have been the victim of Defendant Gosso's
16 retaliatory acts without her superior, Defendant Chen, being a willing, or unwilling accessory."

17 **III. SECTION 1983**

18 The Civil Rights Act under which this action was filed provides:

19 Every person who, under color of any statute, ordinance, regulation,
20 custom, or usage, of any State or Territory or the District of
21 Columbia, subjects, or causes to be subjected, any citizen of the
22 United States or other person within the jurisdiction thereof to the
deprivation of any rights, privileges, or immunities secured by the
Constitution and laws, shall be liable to the party injured in an action
at law, suit in equity, or other proper proceeding for redress....

23 42 U.S.C. § 1983. "[Section] 1983 'is not itself a source of substantive rights,' but merely
24 provides 'a method for vindicating federal rights elsewhere conferred.'" *Graham v. Connor*, 490
25 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)); *see also*
26 *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 618 (1979); *Hall v. City of Los Angeles*,
27 697 F.3d 1059, 1068 (9th Cir. 2012); *Crowley v. Nevada*, 678 F.3d 730, 734 (9th Cir. 2012);
28 *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006).

1 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
2 color of state law, and (2) the defendant deprived him of rights secured by the Constitution or
3 federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *see also Marsh*
4 *v. Cnty. of San Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of state
5 law”). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he
6 does an affirmative act, participates in another's affirmative act, or omits to perform an act which
7 he is legally required to do that causes the deprivation of which complaint is made.’” *Preschooler*
8 *II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*,
9 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be established when an
10 official sets in motion a ‘series of acts by others which the actor knows or reasonably should
11 know would cause others to inflict’ constitutional harms.” *Preschooler II*, 479 F.3d at 1183
12 (quoting *Johnson*, 588 F.2d at 743). This standard of causation “closely resembles the standard
13 ‘foreseeability’ formulation of proximate cause.” *Arnold v. Int’l Bus. Mach. Corp.*, 637 F.2d
14 1350, 1355 (9th Cir. 1981); *see also Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir.
15 2008).

16 Additionally, a plaintiff must demonstrate that each named defendant personally
17 participated in the deprivation of his rights. *Iqbal*, 556 U.S. at 676-77. In other words, there must
18 be an actual connection or link between the actions of the defendants and the deprivation alleged
19 to have been suffered by Plaintiff. *See Monell v. Dep’t of Soc. Servs. of City of N.Y.*, 436 U.S. 658,
20 691, 695 (1978).

21 Supervisory personnel are generally not liable under § 1983 for the actions of their
22 employees under a theory of *respondeat superior* and, therefore, when a named defendant holds a
23 supervisory position, the causal link between him and the claimed constitutional violation must be
24 specifically alleged. *Iqbal*, 556 U.S. at 676-77; *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir.
25 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978). To state a claim for relief under
26 § 1983 based on a theory of supervisory liability, a plaintiff must allege some facts that would
27 support a claim that the supervisory defendants either personally participated in the alleged
28 deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or

1 promulgated or “implement[ed] a policy so deficient that the policy itself is a repudiation of
2 constitutional rights’ and is ‘the moving force of the constitutional violation.” *Hansen v. Black*,
3 885 F.2d 642, 646 (9th Cir. 1989) (citations and internal quotation marks omitted); *Taylor v. List*,
4 880 F.2d 1040, 1045 (9th Cir. 1989). For instance, a supervisor may be liable for his “own
5 culpable action or inaction in the training, supervision, or control of his subordinates,” “his
6 acquiescence in the constitutional deprivations of which the complaint is made,” or “conduct that
7 showed a reckless or callous indifference to the rights of others.” *Larez v. City of Los Angeles*,
8 946 F.2d 630, 646 (9th Cir. 1991) (internal citations, quotation marks, and alterations omitted).

9 **IV. ANALYSIS OF PLAINTIFF’S CLAIMS**

10 **A. Deliberate Indifference to Serious Medical Needs in Violation of the Eighth** 11 **Amendment**

12 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
13 must show ‘deliberate indifference to serious medical needs.’” *Jett v. Penner*, 439 F.3d 1091,
14 1096 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). This requires Plaintiff
15 to show (1) “a ‘serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition
16 could result in further significant injury or the unnecessary and wanton infliction of pain,’” and
17 (2) that “the defendant’s response to the need was deliberately indifferent.” *Id.* (quoting
18 *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992)) (citation and internal quotations
19 marks omitted), *overruled on other grounds by WMX Technologies v. Miller*, 104 F.3d 1133 (9th
20 Cir. 1997) (*en banc*).

21 Deliberate indifference is established only where the defendant *subjectively* “knows of and
22 disregards an *excessive risk* to inmate health and safety.” *Toguchi v. Chung*, 391 F.3d 1051, 1057
23 (9th Cir. 2004) (emphasis added) (citation and internal quotation marks omitted). Deliberate
24 indifference can be established “by showing (a) a purposeful act or failure to respond to a
25 prisoner’s pain or possible medical need and (b) harm caused by the indifference.” *Jett*, 439 F.3d
26 at 1096 (citation omitted). Civil recklessness (failure “to act in the face of an unjustifiably high
27 risk of harm that is either known or so obvious that it should be known”) is insufficient to
28 establish an Eighth Amendment violation. *Farmer v. Brennan*, 511 U.S. 825, 836-37 & n.5

1 (1994) (citations omitted).

2 A difference of opinion between an inmate and prison medical personnel—or between
3 medical professionals—regarding appropriate medical diagnosis and treatment is not enough to
4 establish a deliberate indifference claim. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989);
5 *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004). Additionally, “a complaint that a
6 physician has been negligent in diagnosing or treating a medical condition does not state a valid
7 claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not
8 become a constitutional violation merely because the victim is a prisoner.” *Estelle*, 429 U.S. at
9 106. To establish a difference of opinion rising to the level of deliberate indifference, a “plaintiff
10 must show that the course of treatment the doctors chose was medically unacceptable under the
11 circumstances.” *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996).

12 Plaintiff alleges that Defendant Gosso caused Plaintiff’s prescription for Effexor to be
13 withheld and that Plaintiff suffered severe withdrawal symptoms. Plaintiff further alleges that this
14 was contrary to protocol for Effexor and that Defendant Gosso knew that Plaintiff would suffer
15 from withdrawal symptoms.

16 Plaintiff next alleges that Defendant Johnson knew that because Defendant Gosso had
17 caused Plaintiff’s prescriptions to be withheld, Plaintiff was having withdrawal symptoms,
18 including suicidal thoughts. Plaintiff asked to receive a refill from Defendant Chen or an on-call
19 psychiatrist. Contrary to protocol, Defendant Johnson neither permitted Plaintiff to see a
20 psychiatrist nor ordered him into crisis management.

21 Plaintiff also alleges that Defendant Chen knew that Effexor’s protocol required weaning
22 Plaintiff off his medication and that she improperly ordered that his prescriptions be withheld.
23 Plaintiff further alleges that he suffered withdrawal symptoms because Defendant Chen withheld
24 the medicine.

25 The Court finds that, for screening purposes, the FAC states claims against Defendants
26 Gosso, Johnson and Chen for deliberate indifference to Plaintiff’s serious medical needs in
27 violation of the Eighth Amendment.

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1 **B. Retaliation in Violation of the First Amendment**

2 A retaliation claim requires “five basic elements: (1) an assertion that a state actor took
3 some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and
4 that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action
5 did not reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559,
6 567-68 (9th Cir. 2005) (footnote omitted); *accord Watson v. Carter*, 668 F.3d 1108, 1114-15 (9th
7 Cir. 2012); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009).

8 While prisoners have no freestanding right to a prison grievance process, *see Ramirez v.*
9 *Galaza*, 334 F.3d 850, 860 (9th Cir.2003), “a prisoner’s fundamental right of access to the courts
10 hinges on his ability to access the prison grievance system,” *Bradley v. Hall*, 64 F.3d 1276, 1279
11 (9th Cir.1995), *overruled on other grounds by Shaw v. Murphy*, 532 U.S. 223, 230 n.2 (2001).
12 Because filing administrative grievances and initiating civil litigation are protected activities, it is
13 impermissible for prison officials to retaliate against prisoners for engaging in these activities.
14 *Rhodes*, 408 F.3d at 567.

15 Plaintiff alleges that Defendant Gosso caused Plaintiff’s Effexor to be withheld because
16 Plaintiff had filed a complaint against her. He also alleges that withholding the prescription was
17 against CDCR and the manufacturer’s protocol, and Defendant Gosso was aware that doing so
18 would cause Plaintiff to suffer from withdrawal symptoms. Thus, the Court finds that, for
19 screening purposes, the FAC states claims against Defendant Gosso for retaliation in violation of
20 the First Amendment.

21 Plaintiff alleges that Defendant Chen was Defendant Gosso’s superior. He also alleges
22 that she personally participated in Defendant Chen’s actions by causing Plaintiff’s medications to
23 be withheld. However, Plaintiff does not allege that that Defendant Chen knew of Defendant
24 Gosso’s improper retaliatory purpose. Plaintiff does not allege any facts showing that Defendant
25 Chen acted in retaliation for Plaintiff filing a complaint against Defendant Gosso. Therefore, the
26 Court finds that Plaintiff fails to state a claim against Defendant Chen for retaliation in violation
27 of the First Amendment.

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The Court has screened the FAC and finds that it states cognizable claims against Defendants Gosso, Johnson and Chen for deliberate indifference to serious medical needs in violation of the Eighth Amendment, and against Defendant Gosso for retaliation in violation of the First Amendment. The Court finds that FAC fails to state a claim against Defendant Chen for retaliation in violation of the First Amendment, which is the FAC's only other claim.

1. This case proceed on Plaintiff's claims against (1) Defendants Gosso, Johnson, and [REDACTED] for deliberate indifference to serious medical needs in violation of the Eighth Amendment, (2) Defendant Gosso for retaliation in violation of the First Amendment; and (3) Defendant [REDACTED] for retaliation in violation of the First Amendment.

These findings and recommendations will be submitted to the United States district judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one (21) days after being served with these findings and recommendations, the parties may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

Dated: April 30, 2021

/s/ Eric P. Goss
UNITED STATES MAGISTRATE JUDGE